



General Assembly

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Human Rights Council

Thirty-seventh session

26 February-23 March 2018

Agenda item 6

Universal periodic review

Written statement* submitted by the public organization “Public Advocacy”, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01825(E)



★ 1801825 ★

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Ukraine: draft laws Nos. 4128, 4511, 5309 as a threat to religious peace and a new factor of territorial destabilization

1. About the Submitting NGO and the sources of evidence of the rights violations.

Since 2015, our organization has been monitoring the observance of the rights and freedoms of believers of the Ukrainian Orthodox Church in the Lvov, Rovno, Ternopol, Volyn, Kiev, Zhitomir, Nikolayev, Kherson, Khmelnytsky, Vinnitsa regions. As a result, we have established numerous facts of violations of the rights of the UOC.

The findings of our work are confirmed by the following:

- A statement on current stance with human rights in Ukraine over 16 November 2015- February 15, 2016 by the Office of the UNHCHR (Para. 119-120);
- A report of the US State Department on Religious Freedom in the World of 20152;
- Bulletin of the OSCE SMM during the monitoring period3;
- Reports of human rights organizations4;
- Human Rights Council Working Group on the Universal Periodic Review, twenty-eighth session, Geneva, 6-17 November 20175.

2. Summary of violations of the UOC rights

In accordance with the Statement of Bishop Victor (Kotsaba), Head of Representative Office of the Ukrainian Orthodox Church to International Organizations at the OSCE Meeting, 22-23 June 2017, Vienna,6 "In the period of 2015-2017, 45 temples – religious buildings owned by the UOC religious communities – were subject to raiding, while over 100 temples appeared under threat of such seizures. Officers of the police units, abusing their power, resorted to assault and battery toward our believers in the villages of Ptycha and Katerynivka of Ternopil region, having inflicted severe injuries on elderly people and women. Many religious buildings remain sealed by the authorities up to the present day. Such violent actions are carried out by members of radical organizations with the participation of interested religious confessions, with connivance – and sometimes even direct support – of local authorities”.

3. Draft laws restricting rights of religious organizations of the UOC and establishing additional obligations for religious organizations of this denomination

During the year of 2016, three draft laws (## 4128, 4511, and 5309) were submitted to the Verkhovna Rada of Ukraine, which foresee an introduction of a number of additional obligations for religious organizations of the UOC confession. At the same time similar obligations are not envisioned for other confessions. In particular, draft law #4511 stipulates an obligation of the UOC religious communities to draw up individual agreements with state bodies, as well as to receive a permit to elect (appoint) diocesan administrative staff. Bill #5309 binds religious organizations of the UOC to

1 www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016_ru.pdf

2 https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dynamic_load_id=256253&year=2015#wrapperr,
<http://news.church.ua/2016/08/12/v-go-sdepartamente-ssha-soobshhili-o-narusheniyax-prav-veruyushhix-v-ukraine/?lang=ru>

3 Information message of the OSCE mission on the results of observation of the grips of churches of the UOC and other conflicts in the religious sphere in Ukraine www.potiktor.com/english

4 https://www.upr-info.org/sites/default/files/document/ukraine/session_28_-_november_2017/adf_international_upr28_ukr_e_main.pdf

5 https://www.upr-info.org/sites/default/files/document/ukraine/session_28_-_november_2017/a_hrc_wg_6_28_1_13.pdf

6 <http://www.osce.org/odihr/325191?download=true>

include references on "affiliation to the aggressor state" into their title. Draft law # 4128 unreasonably and in violation of the international law norms establishes the rights of residents of a particular populated area to administer communities within their populated areas irrespective of whether these persons are members of the community's administrative body. The above draft laws are geared at the discriminatory restriction of the UOC in the enjoyment of its rights and if adopted – will bear witness to the ungrounded intrusion of the state into the internal administrative mechanism of religious organization, leading de-facto to the legal obstruction of activities of the UOC religious organizations.⁷

In particular, as the Head of Representative Office of the Ukrainian Orthodox Church to International Organizations Bishop Victor Kotsaba said at the OSCE meeting: "I want to draw particular attention to the preparation of draft laws Nos. 4128, 4511, 5309, submitted to the Verkhovna Rada of Ukraine, which are discriminatory in relation to the Ukrainian Orthodox Church. Thus, some politicians want to impose a special status on our denomination, oblige it to change the name and sign special agreements with state bodies. The appointment of priests is also supposed to be approved by the relevant state structures. At the same time, the obligation is not prescribed for other confessions. Such rules did not exist even in the times of the USSR, whose authorities used to put a systematic but unofficial pressure on the Church. In view of the above, on May 18, 2017, a prayerful standing, which counted thousands of believers, was held near the Parliament in Kiev against the adoption of these laws. Concerns about the probable adoption of such laws were expressed by the World Council of Churches, several Autocephalous Orthodox Churches (Alexandria, Bulgaria, Czech Lands and Slovakia), as well as the State Secretariat of the Vatican. Nevertheless, these bills are still on the agenda of the Ukrainian Parliament."

4. Non-compliance of draft law 4128 with international law

Bill No. 4128 foresees that persons who were not admitted to the community, but who decided to identify themselves with this community, receive the right to vote at a general meeting of the religious community.

Thus, according to the draft law, the provisions of the statutes of religious organizations that provide for membership in the community being obtained only on the basis of an application and establishing the need for approval of membership by a decision of the general meeting of the community members become invalid.

At the same time, standards of the international law establish an obligation of the state to ensure internal guidelines and norms of the religious right as a part of freedom to the freedom of religion. For this reason individuals who observe their religious guidelines can enjoy an unquestionable right to accept or not accept other persons to become members of their religious group, and independently define if these new comers are in line with the criteria enshrined by whatever religious doctrine.

There are no doubts that the person who does not conform to certain rules of religious life, which are deemed fundamental by the certain religious organization, can be not only non-admitted to membership of this religious group but also excluded from it. In fact, the European Court of Human Rights in the case *Obst vs. Germany* (№ 425/03), by the chamber resolution of 23.09.2010, declined a complaint of the applicant – member of the Mormon religious organization who had been made redundant in this organization and excluded from the community's membership due to the fact of his conjugal infidelity. The court admitted that the claimant, who had been raised in the Mormon environment, had to be aware of the importance of faithfulness in marriage and inappropriateness of misconduct under the regulations of this organization.

⁷ <https://www.protiktor.com/english/>

It's noteworthy, the European Court of Human Rights laid down some legal provisions which are not to be changed even by virtue of adopting the draft law under consideration. In particular, under the ECHR's decision dated 14.06.2007 in the case "Saint Michael parish against Ukraine", it is stated (para 146-147): "Contrary to the conclusions of national courts, articles 7 and 8 of the Law, it was not enshrined that a religious group shall consist of all individuals and all believers who attend worship services of a particular church... article 8 of the Law (987-12) in no way restricts or hampers a religious organization to determine on its own choice in which way it will decide to enroll new members, define the membership criteria and election procedure for the administrative bodies. From the standpoint of article 9 of the Convention (995_004), taken together with article 11, these were the decisions being in the private law plane and not being subject to interference from the state power bodies unless they violate rights of other individuals or fall under restrictions specified in para 2 of articles 9 and 11 of the Convention. In other words, the state cannot commit a legally existing private association to accept new members and exclude the elected ones. Intrusion of such kind will definitely enter into collision with the freedom of religious associations to freely regulate their behavior and handle their matters.

Conclusion: the right to self-identification of a person as a ground for his/her being enrolled as a member of the religious community and his/her being invested simultaneously with powers of the administrative body of the religious community appears as a violation of the international legal principle of autonomy of religious organizations and non-interference of the state into internal activity of denominations to be regulated solely by their internal rules and guidelines.

Therefore, the proposal of the draft law makers that persons can become members of the religious community merely by virtue of self-identification does not comply with the provision, defined in the International Law and enshrined in the above mentioned decision of the European Court of Human Rights.

Given the extreme tension as regards the religious situation in Ukraine, which exacerbated in 2018 due to numerous forceful confrontations and acts of violence against the Ukrainian Orthodox Church and its believers, we call on the international community to make every effort in order to prevent the Ukrainian Parliament from the adoption of the aforesaid bills.



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Agenda item 4

Human rights situations that require the Council's attention

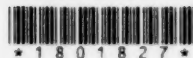
Written statement* submitted by Christian Solidarity Worldwide, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2018]

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GE.18-01827(E)



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Situation of Freedom of Religion or Belief in Myanmar

Christian Solidarity Worldwide (CSW) seeks to draw the Council's attention to the situation of freedom of religion or belief in Myanmar.

CSW welcomes the continued efforts of the UN Special Rapporteur on the situation of human rights in the Myanmar, Yanghee Lee, and further welcomes the work of the Human Rights Council Independent International Fact-Finding Mission since it began in March 2017. Its independence should be maintained, and it should be given adequate resources to carry out its mandate.

In 2015, the National League for Democracy (NLD) won the country's first democratic elections in 25 years but democratisation remains fragile, and there is evidence of significant regression in some areas, particularly freedom of the press, freedom of expression and freedom of religion or belief (FoRB).

Concerns remain for political prisoners jailed under Section 295 of the penal code and for those who remain in detention or face detention because of their political activities, ethnicity or religion, including two journalists who are currently detained accused of breaching Section 3.1(c) of the Official Secrets Act.¹ The two men, Wa Lone and Kyaw Soe Oo, worked on Reuters' coverage of the Rohingya crisis in Rakhine State, Myanmar.

Freedom of religion or belief

CSW remains concerned by rising militant Buddhist nationalism, which has created an atmosphere of rising religious intolerance and severe threats to FoRB.

The campaign of militant Buddhist nationalism continues to preach hatred, principally of Muslims, but also threatens Christians, other non-Buddhists, and even affects Buddhists who attempt to oppose the Buddhist nationalist campaign. Hate speech and discrimination are widespread, including affecting daily needs such as access to housing, education and employment.

Sporadic violence against Muslims has occurred throughout the country since 2012. This is separate from, although related to, the crisis facing the Rohingyas in Rakhine state.

Legislation has also contributed to religious intolerance. A package of four laws aimed at the 'protection of race and religion' was passed in 2015, despite significant human rights concerns being highlighted by civil society, the NLD - who were the opposition party at the time - and the international community. The legislation introduces restrictions on religious conversions and interfaith marriage, and furthers discrimination against religious and ethnic minorities, and against women. Furthermore, the Penal Code has been used to prosecute those deemed to have 'insulted' religion; in 2015, a Buddhist politician and member of the NLD, Htin Lin Oo, was jailed on charges of insulting Buddhism after he criticised militant Buddhist nationalists, saying their hate speech was incompatible with the teachings of Buddhism.

CSW calls on the government of Myanmar to repeal all legislation that discriminates against religious and ethnic minorities including laws that limit religious conversion and interfaith marriage.

The Plight of the Rohingya

The violence against the predominantly Muslim Rohingya people has given rise to a humanitarian crisis described by the UN High Commissioner for Human Rights as "a textbook example of ethnic cleansing".² In December 2017 he went further, reporting "acts of appalling barbarity" suggesting that no one could rule out that "elements of genocide

¹ Reuters News, 'Police sought Secrets Act probe of Reuters reporters an hour after their arrest', 22 January 2018 <https://www.reuters.com/article/us-myanmar-journalists/police-sought-secrets-act-probe-of-reuters-reporters-an-hour-after-their-arrest-idUSKBN1FB352>

² OHCHR News 'Human Rights Council 36th session: Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights', 11 September 2017 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>

may be present".³ The UN Secretary-General described the crisis as "the world's fastest developing refugee emergency and a humanitarian and human rights nightmare".⁴

The crisis in 2017 is preceded by decades of severe persecution of the Rohingyas. The Rohingya are effectively stateless, as the 1982 Citizenship Law denies them full citizenship; this has resulted in the Rohingya living without rights such as the right to vote, to freedom of movement, or to access basic services.

While CSW welcomes the establishment of the Rakhine Advisory Commission, set up by Aung San Suu Kyi and chaired by former UN Secretary-General Kofi Annan, there is a long way to go.

On 25 August 2017, the Commission published its report on the situation of the Rohingya people in Rakhine with a set of recommendations offering the best hope of progress towards justice and peace. Within hours a small, armed militant group known as the Arakan Rohingya Salvation Army (ARSA) reportedly launched attacks against 30 Burmese police posts, sparking a disproportionate response from the Myanmar Army involving attacks on villages and civilians. As a result of the army's actions, an estimated 626,000 people fled to Bangladesh, thousands were killed, hundreds of villages burned.⁵ Reports of horrific human rights atrocities include the burning of homes, schools and mosques; the deliberate burning to death of people inside their homes; torture; mass rape; execution without trial; and the blocking of aid.

During the UN Human Rights Council's Special Session held on the 5 December 2017 to discuss the human rights situation of the Rohingya, the UN High Commissioner for Human Rights said that these attacks were human rights violations "possibly amounting to crimes against humanity, and warranting the attention of the International Criminal Court".⁶ The Session concluded with a Resolution on the human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine state, CSW echoes the Council's calls for the High Commissioner for Human Rights to monitor the human rights situation of the Rohingya people, and to provide oral updates to the Council for a period of three years and a comprehensive written report, including the level of access given to the UN Fact-Finding Mission and Special Procedures.

The situation has been further aggravated by lack of co-operation on the part of the Burmese Government. CSW is concerned by that the government of Myanmar has denied the Human Rights Council Independent International Fact-Finding Mission access to Rakhine state and has not cooperated with the mission since it began in March 2017. Furthermore, the UN Special Rapporteur, Yanghee Lee, was denied access to the country in December 2017, despite having had cooperation from the government in the past. In response to the decision, Ms. Lee commented, "They [the Burmese Government] have said that they have nothing to hide, but their lack of cooperation with my mandate and the fact-finding mission suggests otherwise."⁷

CSW calls on the government of Myanmar and the international community to take decisive action to see these atrocities come to an end. CSW further calls on the government of Myanmar to allow unhindered access to international humanitarian aid agencies, human rights monitors, media, the UN representatives for the Fact-Finding Mission, and the UN Special Rapporteur on Myanmar

3 OHCHR News 'Council concludes twenty-seventh special session on the human rights situation of the Rohingya Muslims and other minorities in Myanmar', 5 December 2017

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22494&LangID=E>

4 United Nations Secretary-General Statement, Secretary-General's remarks at open debate of the Security Council on Myanmar [as delivered], 28 September 2017

<https://www.un.org/sg/en/content/sg/statement/2017-09-28/secretary-generals-remarks-open-debate-security-council-myanmar>

5 OHCHR News, 'Council concludes twenty-seventh special session on the human rights situation of the Rohingya Muslims and other minorities in Myanmar', 5 December 2017

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22494&LangID=E>

6 OHCHR News, 'Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein', 5 December 2017 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22487&LangID=E>

7 OHCHR News, 'Myanmar refuses access to UN Special Rapporteur', 20 December 2017 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22553&LangID=E>

Freedom of Religion or Belief in Kachin State

Ethnic conflict against the Kachin and Shan peoples has also continued, leaving at least 140,000 civilians displaced, 200 villages attacked and 66 churches destroyed within the last five years. The judicial system has systematically failed to hold to account perpetrators of abuses such as torture, forced labour, rape and sexual violence and also directly discriminates against these minorities.

Clashes between the Kachin Independence Army and Myanmar Army have been ongoing for almost seven years following the collapse of a 17-year ceasefire. The UN Office for the Coordination of Humanitarian Affairs estimates that approximately 100,000 civilians remain displaced by conflict across Kachin and northern Shan states.

On 27 October 2017, two Kachin Christians, Dumdaw Nawng Lat, 67, and Langjaw Gam Seng, 35, received prison sentences for guiding journalists through a church that was reportedly bombed by the Burmese military. The men, who are members of the Kachin Baptist Convention, were both convicted under the Unlawful Associations Act for their alleged support of the Kachin Independence Army, and under the Import Export Act for operating motorcycles without a licence. CSW urges the authorities in Myanmar to release Dumdaw Nawng Lat and Langjaw Gam Seng, who have committed no crime, and calls on the international community to raise their case with the government of Myanmar.

Recommendations to the International Community:

- Work to see greater international action taken to end the violence against the Rohingya, and ensure that no members of the Rohingya community who have fled Myanmar are returned until their safety upon return can be guaranteed.
- Ensure that engagement with Myanmar on human rights and freedom of religion or belief does not focus entirely on the plight of the Rohingya to the exclusion of the Kachin and Shan people and Muslims, Christians and other minorities throughout the country. Freedom of religion or belief must be recognised as a priority for all the people of Myanmar.
- Urge members of the Security Council to add to the pressure on Myanmar authorities by considering options such as an arms embargo against the military and targeted financial sanctions against individuals responsible for crimes and serious abuses.
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Recommendations to the government of Myanmar:

- Allow international humanitarian aid agencies, human rights monitors, the media, representatives for the UN Fact-Finding Mission, and the UN Special Rapporteur on Myanmar unhindered access to the country.
- Take meaningful action to address hate speech and discrimination, implementing the tools of the Rabat Plan of Action and other international programs for countering religious hatred.
- Repeal all legislation that discriminates against religious and ethnic minorities including laws that limit religious conversion and interfaith marriage.
- Change or repeal the 1982 citizenship law, allowing the Rohingya access to full citizenship rights.



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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Christian Solidarity Worldwide, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31:

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GE.18-01829(E)



* 1801829 *

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Situation of Human Rights Defenders campaigning for Freedom of Religion or Belief

Christian Solidarity Worldwide (CSW) welcomes the continued efforts of the UN Special Rapporteur on the situation of human rights defenders, Mr Michel Forst, and urges the Council to ensure the Special Rapporteur is given adequate resources to carry out his mandate.

CSW recognises that the international community increasingly supports the critical role human rights organisations and HRDs play in promoting human rights around the world, but remains concerned by the multiple challenges they face, including de jure restrictions in the form of restrictive legislation, extensive bureaucratic hurdles, as well as harassment, intimidation, violence, murder and torture.

In particular CSW seeks to draw the Council's attention to the situation of HRDs in Bangladesh, India and Pakistan who are campaigning for freedom of expression and freedom of religion or belief (FoRB). HRDs, journalists and lawyers who campaign for these rights are at particular risk and have been subject to increasing scrutiny and pressure from both state-actors and extremist groups in recent years. CSW also remains concerned about widespread impunity across the region and calls on the international community to protect HRDs from harassment and attacks and ensure perpetrators are brought to justice in accordance with the law.

Legal challenges faced by human rights defenders

While the Constitution of India protects FoRB as a fundamental right (Article 25), as well as rights to free speech and assembly (Article 19), HRDs advocating for FoRB in India have faced increased restrictions. The rise to power of the Bharatiya Janata Party (BJP) in 2014¹ - which is the political arm of the RSS, a Hindu nationalist organisation that espouses Hindutva - has threatened pluralism in India.

The Hindutva ideology espoused by the BJP encourages intolerance towards non-Hindus. In recent years, right wing rhetoric from politicians and other leaders seems to go unchecked and the space allowed by the state for civil society activity appears to be shrinking. These trends seem likely to continue to worsen, especially if steps are not taken to protect the rights of HRDs to ensure compliance with internationally recognized standards. One critical example is the use of the Foreign Contribution (Regulation) Act 2010 (FCRA)² by the Indian government to clamp down on foreign funding for Non-Governmental Organizations (NGOs). This has undermined the work of civil society and is in breach of Articles 5(c) and 13 of the United Nations Declaration on Human Rights Defenders.

The FCRA has been used to stifle the work of tens of thousands of NGOs and human rights activists. As of December 2016, the FCRA licenses of 20,000 NGOs, out of a total of 33,000 NGOs, were cancelled.³

In 2016, three UN Special Rapporteurs jointly urged the government of India to repeal the FCRA law. The UN Special Rapporteur on human rights defenders, Michel Forst, the Special Rapporteur on freedom of expression, David Kaye, and Maina Kiai, the Special Rapporteur on freedom of association, said, "We are alarmed that FCRA provisions are being used more and more to silence organisations involved in advocating civil, political, economic, social, environmental or cultural priorities, which may differ from those backed by the government."⁴

¹ Christian Solidarity Worldwide, 'India: Key concerns relating to freedom of religion or belief', March 2017

² FCRA Services, The Foreign Contribution (Regulation) Act, 2010 https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

³ *The Indian Express*, 'FCRA licences of 20,000 NGOs cancelled', 27 December 2016

<http://indianexpress.com/article/india/fcra-licences-of-20000-ngos-cancelled-4447423/>

⁴ OHCHR news, 'UN rights experts urge India to repeal law restricting NGO's access to crucial foreign funding', 16 June 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

CSW urges the government of India to reform the FCRA and to introduce proper safeguards against arbitrary or politically-motivated curtailment of NGO funding.

In Bangladesh, political unrest has led to repeated cycles of violence in recent years which disproportionately affected religious minorities and secular activists. While a great tradition of civil society engagement has been established since the Liberation War of 1971, restrictive laws and government practice are narrowing the space for HRDs. Moreover, sections of Bangladesh's Information and Communication Technology (ICT) Act restrict HRDs' right to voice criticism and concern without fear of sanctions.⁵ Other recent laws of concern include the 2014 Foreign Donations (Voluntary Activities) Regulation Act (FDRA), the 2015 Youth Organization (Registration and Operation) Act and the draft Digital Security Act⁶.

CSW calls on the government of Bangladesh to amend or repeal laws that restrict activities of HRDs within Bangladesh.

Challenges faced by bloggers and journalists campaigning for FoRB:

Numerous FoRB HRDs in India, including journalist and former President of the All India Catholic Union, John Dayal, have experienced harassment for campaigning for FoRB including hate speech, online trolling⁷ and threats to their lives. When John Dayal received threats online, the police did not intervene, a trend that has been experienced by several other human rights defenders across India.

Furthermore, scientists, academics, writers, actors and filmmakers in India have also been threatened in recent years and forced to self-censor. Many have joined the 'Award Wapsi' campaign and returned national awards they received earlier in their career as a mark of protest.⁸

There has also been a spate of attacks on 'rationalist' and secular activists and journalists since 2013 in India, resulting in the murders of Dr Narendra Dabholkar, Govind Pandharinath Pansare, MM Kalburgi and Gauri Lankesh.⁹ These individuals had all spoken up against Hindutva (Hindu nationalist right wing ideology), the targeting of religious minorities and had campaigned for free speech.

In Bangladesh, in 2013, a 'hit list' which contained names of 84 bloggers was sent anonymously to newspapers across the country. The list comprised of bloggers who held atheistic views and challenged religious extremism through their writing. Since the publishing of the list, Islamist extremist groups have brutally murdered at least seven bloggers and publishers, including Rajib Haider, Avijit Roy, Washiqur Rahman, Ananta Bijoy Das, Niloy Chatterjee, Faisal Arefin Dipan, and Nazimuddin Samad. These murders, along with increased state surveillance and disappearances, have forced many journalists and human rights defenders into self-censorship. Police investigations on the murders have made little progress, supporting the culture of impunity that HRDs fear emboldens the perpetrators to carry out further targeted attacks.

⁵ Article 19, 'Bangladesh: Information Communication Technology Act', 10 May 2016
www.article19.org/resources/bangladesh-information-communication-technology-act/

⁶ The International Center for Not-for-Profit Law, 'Civic Freedom Monitor: Bangladesh', accessed 23 June 2017
<http://www.icnl.org/research/monitor/bangladesh.html>

⁷ Scroll.in, 'What the online attacks on my father say about India: activist John Dayal's daughter takes stock', September 14, 2015, <https://scroll.in/article/755453-what-the-online-attacks-on-my-father-say-about-india-activist-john-dayal-s-daughter-takes-stock>

⁸ *Hindustan Times*, 'And it continues: 24 more filmmakers, writers return awards', Nov 6 2015
<http://www.hindustantimes.com/india-and-it-continues-kundan-shah-saeed-mirza-join-award-wapsi-story-t7guKRzkGv7ZrsTY6vOMZJ.html>

⁹ UN News Centre, 'Following Lankesh's murder, UN rights experts urge Indian Government to protect free speech', 13 September 2017 <http://www.un.org/apps/news/story.asp?NewsID=57510>

CSW urges the international community to ensure that all HRDs, including journalists and those from religious minority groups, are protected and that offences are not treated with impunity.

Challenges faced by lawyers protecting the right to FoRB:

The situation for religious minorities in Pakistan has deteriorated over the years. Alongside the misuse of discriminatory legislation like the blasphemy laws and anti-Ahmadi legislation, incidences of communal violence have become increasingly prominent against religious minorities. These attacks are often treated with impunity by the state and police authorities. HRDs have faced an increase in attacks with constant threats from a variety of state and non-state actors including Islamist groups for defending those accused of blasphemy and being critical of the state and military.

Lawyers and judges working on blasphemy cases in Pakistan endure extreme pressure, as they are regularly intimidated by mobs – an act in breach of international law and Article 20 of Pakistan's constitution. Rashid Rehman, a Pakistani lawyer, was shot dead on 7 May 2014 for defending a university lecturer accused of blasphemy. HRDs report that it is becoming unacceptable for any defender to even call for the reform or repeal of the blasphemy laws.

Pakistani HRDs who speak out on human rights violations are subject to harassment, targeted attacks and enforced disappearance, with little protection provided by the government.

CSW urges the government of Pakistan to guarantee rule of law and protection for minorities using all appropriate measures, including conditions of fair trial and police protection for witnesses, judges and lawyers during court proceedings in blasphemy cases.

Recommendations to the Human Rights Council:

- To protect all HRDs, including journalists and those from religious minority groups from attack, and to ensure offences against HRDs are fully investigated, without exception.
- Ensure rule of law and protection for minorities is guaranteed using all appropriate measures, including conditions of fair trial and police protection for witnesses, judges and lawyers during court proceedings in blasphemy cases;
- To amend or repeal laws that restrict activities of HRDs, and introduce proper safeguards against arbitrary or politically-motivated curtailment of NGO funding.



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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Child Rights Connect, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby
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Written Statement by Child Rights Connect for the 37th Session of the Human Rights Council: Key Children's Rights Principles to be adopted for the Protection of the Rights of the Child in Humanitarian Situations

Child Rights Connect is the largest international network for child rights. We are an independent, non-profit network made up of more than 80 national, regional and international organisations, networks and coalitions. Our membership covers every country on the planet. Our shared aim is to ensure that all children can fully enjoy their rights, as defined by the Convention on the Rights of the Child (CRC).

In humanitarian situations, **existing threats are exacerbated** (for example, violence and trafficking) and **new threats** can appear (for example, recruitment into armed groups and attacks on education and healthcare). Displacement, separation from family and community, losing a parent or a care giver, losing a home and possessions are all factors that further increase the vulnerabilities of children. At the same time, the protective environment, both in the community and the official child protection services, is weakened by a **lack of safety, security and a dependence on humanitarian assistance**.

To ensure that the rights of all children as set out in the CRC are protected, promoted and fulfilled for children affected by humanitarian situations, a **child rights-based approach** must be implemented during all stages of humanitarian situations (before, during, after and in protracted conflicts) and hence, be:

- **Grounded by the principle of non-discrimination:** The **complex intersectionality** between different statuses of children such as age, gender, gender identity and sexual orientation, ethnicity, religion, social and personal identity, disability, geographical location and socioeconomic status has to be taken into account to help to identify, monitor and respond to the needs of specific groups of children facing additional barriers in accessing their rights,^{1 2} including girls and children with disabilities.
- **Grounded by the principle of the best interests of the child:** The best interests of the child in all stages of a humanitarian situation must not only be in relation to the full enjoyment of all the rights provided for in the CRC, but also with regard to **international humanitarian law and standards** which relate to humanitarian situations.³ This must include efforts for tracing, family reunification and/or providing appropriate alternative care⁴ for all affected children.
- **Ensuring the right of every child to be heard:** A recognition that whilst children require protection in humanitarian situations, they also need to be **empowered to have their voices heard and taken into account** in all decisions directly and indirectly affecting them, in a safe way and across all stages of humanitarian situations. In doing so, care must be taken to protect children from exposure to situations that could be traumatic or harmful.⁵ Children must be encouraged, enabled and supported to meaningfully participate in analysing their situation and future prospects: in keeping with their evolving capacity, they can also participate in implementing actions to respond to the humanitarian situation. Meaningful participation should take place before, during and after an emergency to help children to regain control over their lives while contributing to rehabilitation⁶ and broader sustainable development and peace.

1 https://www.unicef.org/publications/files/CCC_042010.pdf

2 <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=19997&LangID=E>

3 General Comment 13 to the UNCRC; Article 38 to the UNCRC

4 UN Guidelines for the Alternative Care of Children, chapter IX

5 https://www.savethechildren.org.uk/sites/default/files/docs/Children_Participation_Humanitarian_Guidelines.pdf

6 General Comment 12 to the UNCRC

- **Ensuring the right to life, survival and development:** The many risks and protective factors that underlie the survival, growth and development of every child (including the physical, mental, moral, spiritual and social dimensions of their development) affected by humanitarian situations need to be systematically identified in order to design and implement **evidence-informed interventions** that address a wide range of determinants during the life course.⁷ These interventions should be linked to the relevant Sustainable Development Goals and integrated into the country's overall development plans.
- **Strong language on monitoring, follow-up and accountability mechanisms:** Specific calls for **strong, robust, inclusive, participatory, impartial, independent and effective** monitoring, follow-up and accountability mechanisms to be in place, which integrate a children's rights perspective. This needs to include disaggregated (for example, by, gender, age, socioeconomic status and marital status) and broader data collection in humanitarian situations, to better address the challenges that specific groups of children face. The **2030 Agenda** should be used to link and reinforce human rights accountability mechanisms at national, regional and international level.

Thematic areas of priority

- **Child protection in humanitarian action:** Ensure that child protection is given the same attention and funding as other areas in humanitarian action. In emergency response, child protection must be included from the start to avoid harm to children that may have long term effect on their lives and development. Prioritise and fully fund violence prevention and protection needs, particularly those that stem from underlying gender norms like sexual and gender-based violence. Ensure that humanitarian and development actors work together to ensure a continuum of protection and services.⁸

Civil registration and, in particular, **birth registration**, provide substantial information for policy and humanitarian planning and contribute towards enhancing protection for children and the implementation of durable solutions. Therefore, appropriate measures need to be taken to ensure civil registration and make sure that every child is registered immediately after birth without discrimination of any kind.

- **Education for all children in humanitarian action:** More than 75 million children and young people (aged 3-18) are currently out of school in 35 crisis-affected countries. Girls are particularly disadvantaged, being 2.5 times more likely to be out of school than boys in countries affected by conflict. This violates the rights of children and youth, increasing their risk of harm and leaves them exposed to threats of **trafficking, child labour and child marriage**. Fulfilling children's right to be in school and learning, in compliance with the CRC and 2030 Agenda, helps to break the cycle of crises and delivers high economic and social returns. Unfortunately, education is grossly underfunded, receiving less than 2% of humanitarian funding.⁹ Ensure that Member States, UN agencies and the international community prioritise, increase and improve the financing for education in emergencies, so that children's right to access quality education is recognised as a critical part of a humanitarian response from day one.¹⁰
- **Child physical & mental health including psychosocial support:** Children have been frequently shown to be at increased risk of experiencing violations to their right to health in humanitarian contexts such as lack of access to adequate safe food and water and disruptions in health services. This often leads to a deterioration of children's social and/or psychological health¹¹ and nutritional status. Call for the provision of resources to facilitate age-appropriate and gender-sensitive psychosocial support, protection and fulfilment of their sexual and reproductive health rights, nutrition interventions and other assistance to serve every child's physical, mental, spiritual, moral, and social development, recovery, and reintegration. This must include access not only during humanitarian situations but also in protracted crises and following the end of a humanitarian situation, and reach displaced and refugee children.

⁷ General Comment 15 to the UNCRC

⁸ UNCRC General Comment No. 19; HRC resolution 28/19

⁹ <http://www.educationcannotwait.org/the-situation>

¹⁰ <http://www.savethechildren.org.uk/resources/online-library/financing-learning-every-last-child>

¹¹ http://www.who.int/mental_health/emergencies/guidelines_iase_mental_health_psychosocial_june_2007.pdf

- **Deprivation of liberty in humanitarian situations:** Deprivation of liberty of children should be used as a measure of last resort under conditions that respect the human rights of each child and in a manner that takes into account, as a primary consideration, the best interests of the child; and used only for the shortest period of time. Children who have alleged associations with armed groups should not be subjected to the same legal and detention procedures as adults due to their vulnerability. States should instead promote the development of alternative tools to the persecution, detention and deprivation of liberty of children whilst taking into consideration the best interests of the child. The detention of a child because of their or their parent's migration status constitutes a child rights violation, always contravenes the principle of the best interests of the child and should cease immediately.¹²
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¹² UNCRC, Report of the 2012 Day of General Discussion, para.78



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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Rights of the Child: Sale of Children - Illegal adoptions

Introduction

While recognizing that the Convention on the Rights of the Child ("CRC"), its Optional Protocols, and mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography have all been critical steps in addressing the global needs of children, a wide variety of illegal acts and illicit practices have been, and continue to be, committed in the context of domestic and intercountry adoptions.

The preamble of the CRC recognizes that for the full and harmonious development of personhood, children should grow up in a family environment. Article 7 of the CRC emphasizes the need for children to be registered immediately after birth and to have the right from birth to name, nationality, and as far as possible, the right to know and be cared for by their parents. Moreover, Article 8 directs "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

Article 21 of the CRC establishes that the paramount consideration in all matters related to adoption must be the best interests of the child. Particular attention is paid to the need for constructs to facilitate legal adoptions, including appropriate measures that guarantee the placement of children is not inspired by improper financial gain.

To this end, Article 21 calls on State Parties participating in the system of adoption to ensure the process "is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary."

II. The Phenomenon of Illegal Adoptions

In her report at thirty-fourth session of the Human Rights Council ("HRC") in March 2017, the Special Rapporteur on the sale of children conducted a thematic study on the illegal adoption for commercial purposes, with recommendations on how to prevent and combat the phenomenon.¹ By her account, "adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any illicit activity or practice, such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption, constitute illegal adoptions and must be prohibited, criminalized and sanctioned as such."²

Illegal adoptions violate a multitude of human rights, including the rights of both biological and adoptive parents, as well as their subsequent families. Bearing in mind HRC resolution 34/16—which calls for no child left behind, and that those furthest behind be reached first³—additional attention, concern, and resources must be dedicated to the issue of illegal adoptions and the myriad of ways in which the unlawful practice devastatingly corrodes a child's most essential human rights.

1 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography U.N. Doc. A/HRC/34/55 (March 2017).

2 *Id.*, para. 25.

3 Rights of the child: protection of the rights of the child in the implementation of the 2030 Agenda for Sustainable Development, A/HRC/RES/34/16, para. 7, (March 24, 2017).

A. Forms of Illegal Adoptions

Among the most common methods used to facilitate illegal adoptions are the abduction of babies (through kidnappings or by falsely informing parents that their baby was stillborn or died shortly after birth), the improper inducement of consent (through misrepresentation, bribery or coercion), and improper financial gain (through payment for the child or the payment of bribes to intermediaries involved in the adoption process).⁴ Inherent to these methods is the bypass of regulations and falsification of documents, including birth and medical certificates, the identification documents of the biological mother, DNA test results, and relinquishment or abandonment declarations.⁵

In her report, the Special Rapporteur on the sale of children notes that the above-mentioned methods, illegal acts, and illicit practices are generally “linked to deficiencies in the child protection system (such as inadequate procedures for providing counseling to biological parents and flawed relinquishment procedures), which are exploited by criminal networks driven by the lucrative business of selling children and facilitating illegal adoption, often with the involvement of State officials.”⁶

In cases of both domestic and intercountry illegal adoptions, “vulnerable parents, in particular mothers, are often targeted (e.g. single mothers in situations of economic hardship, from rural areas, belonging to indigenous communities and/or without access to education).”⁷ Thus, layers of crossover exist in terms of the human rights violated by this ongoing criminal practice.

B. Factors Enabling Illegal Adoptions

Deficiencies in the child protection system, as well as political, legal, socioeconomic, cultural and environmental factors all play a role in illegal adoptions. Perhaps most alarmingly, however, is the involvement of State officials and licensed professionals, combined with the pressure of demand. In some cases, this lucrative illegal baby trade is openly advertised on social media networks, whereon potential buyers can pick from a catalogue of pregnant women, customizing child by gender, color, and race.⁸ This practice is further carried out by a web of agents, including traffickers, doctors, lawyers, judges, and State officials.⁹

Underground sex trades have also reportedly become involved with illegal adoptions. Studies indicate that while women sex-workers used to avoid getting pregnant, a gainful market now exists to sell unwanted children for further profit, thus creating a trifecta of income for traffickers.¹⁰

In terms of demand, there is a sense that many parties involved, including mediators and adoptive parents themselves, believe they are ultimately helping the child by providing promise of what they deem a “better life.” This notion, however, replaces the child’s will with that of the adopter, and it must be emphasized that international norms and standards do not establish the right to adopt.¹¹

III. Effects of Illegal Adoptions on the Rights of the Child

Illegal adoptions violate multiple child rights norms and principles, including the best interest of the child, the principle of subsidiarity and the prohibition of improper financial gain. These principles are breached when the motivation behind an adoption is to find a child for adoptive parents rather than a family for a child in need.

⁴ A/HRC/34/55, *supra* note 1, para. 28.

⁵ *Id.*, para. 29.

⁶ *Id.*

⁷ *Id.*, para. 30.

⁸ Lyhia Aziz, *Ugly Truth of Baby-Selling*, Vulcan Post (November 2016) <https://vulcanpost.com/595236/documentary-babies-selling-malaysia-expose/>.

⁹ *Children for Sale*, Vice International (June 2017), <https://www.youtube.com/watch?v=BMnOrRf0Wug>.

¹⁰ Lyhia Aziz, *supra* note 8.

¹¹ A/HRC/34/55, *supra* note 1, para. 26.

Adopted children are not blank slates. They are people with genetic tendencies, predispositions, and talents uniquely their own, endowed with the promise to be "born free and equal in dignity and rights."¹² This promise is obliterated by the practice of illegal adoptions, through which babies are bought and sold like stock-in-trade.

Beyond the obvious detriment to personhood and dignity, as well as denial of the right to family, the practice of falsifying documents poses additional practical concerns. Without a birth certificate, children are denied the right "to recognition everywhere as a person before the law."¹³ Lack of proper documentation renders a child stateless. Without citizenship, illegally adopted children are denied the right to public education and healthcare. They cannot apply for a passport, open a bank account, or get married. Perhaps less fundamentally, but importantly, their trust of government is destroyed upon knowledge that doctors, lawyers, judges, and State officials are not only complicit, but in many cases active in the process. These illegally adopted children are denied proper standing in our world from the beginning of their own existence.

IV. Recommendations

1. Human Rights Advocates ("HRA") urges the HRC to hold an all-day panel on illegal adoptions. This issue necessarily involves multiple cross-sections of human rights violations, which are only further amplified and exploited in countries contending with severe poverty, humanitarian situations, and armed conflict, just to name a few. Beyond the children adversely affected, this issue further touches and concerns the rights of biological parents, adoptive parents, their subsequent families, communities, and thus, the threads of society at large.

2. Additionally, HRA respectfully requests the HRC to urge State Parties participating in the system of adoption to address pervasive problems inherent to the sale of children and illegal adoptions, including:

- Regulation and supervision of adoption processes, including initiatives addressing the issues of falsified documents and improperly induced consent. Current gaps in national child protection systems could potentially be addressed by implementing national Registries for both biological mothers and children.
- Ensuring unlawful activity of every kind, committed at any stage in the adoption process is criminalized, for corruption of this nature necessarily feeds into the sale of children and illegal adoption practices.
- Procedures for victims to report violations, particularly in instances of systemic abuse at the hands of State officials and licensed professionals, including doctors, lawyers, and judges.

¹² Universal Declaration of Human Rights, Article 1.

¹³ *Id.*, Article 6.